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CURRENT TOPICS

Custody Order after Remarriage

A VERY unusual point arose in *Grainger* v. *Grainger* (1959), *The Times*, 8th July. The parents of a child were divorced in 1958, but they later remarried each other. The mother rejoined the co-respondent and SACHS, J., was asked to make an order as to the custody of the child. He refused to do so and in the Court of Appeal both parents contended that the court had power to make such an order by reason of s. 26 (1) of the Matrimonial Causes Act, 1950. That section provides that: "In any proceedings for divorce . . . the court may from time to time, either before or by or after the final decree, make such provision as appears just with respect to the custody . . . of the children the marriage of whose parents is the subject of the proceedings." The parents maintained that this jurisdiction might still be invoked, notwithstanding the fact that the parties to those "proceedings for divorce" were again husband and wife and that no proceedings were pending in respect of their marriage. Because he could see no good ground for interfering with the judge's discretion, LORD EVERSHED, M.R., did not find it necessary to express a considered opinion on the question as to jurisdiction. However, he agreed with Sachs, J., "that the idea that the remarriage should remain bedevilled by the continuing existence of old proceedings or possible threats of reviving them at any moment was overridingly repugnant to his mind . . . It was contrary to common sense and public policy." In *Packer* v. *Packer* [1954] P. 15, DENNING, L.J. (as he then was), found parenthood to be the test of jurisdiction under s. 26 (1) of the 1950 Act. However, in *Grainger* v. *Grainger*, *supra*, the test of parenthood was satisfied as the husband and wife were the parents of the child in question but, because of their remarriage, it seems clear that an application under s. 26 (1) was no longer available to them.

Standing Down

BLACKSTONE found that "it is the most transcendent privilege which any subject can enjoy or wish for, that he cannot be affected either in his property, his liberty or his person but by the unanimous consent of twelve of his neighbours and equals." However, there are circumstances in which in the course of a criminal trial the number of jurors may be reduced and this happened in a recent trial at the Old Bailey. In the course of the trial a juror announced that he felt much embarrassment in trying the case as he found it difficult "entirely to believe the police" in view of personal experience which, he said, had affected his judgment in such matters.

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After ascertaining that the counsel for the prosecution and counsel for the defence raised no objection, the Recorder, Sir GERALD DODSON, allowed the juror to stand down and take no further part in the trial. The case continued with eleven jurors. Section 15 of the Criminal Justice Act, 1925, provides that where in the course of a criminal trial any member of the jury dies or is discharged by the court because of illness or for any other reason, the jury shall nevertheless, subject to assent being given in writing by or on behalf of both the prosecutor and the accused and so long as the number of its members is not reduced below ten, be considered as remaining for all the purposes of that trial properly constituted, and the trial shall proceed and a verdict may be given accordingly. It seems that the requirement of this statutory provision with regard to the necessary consent being given in writing will be strictly observed. Indeed, in *R.* v. *Davis* (1936), 26 Cr. App. R. 15, du Parcq, J., stressed that written consent is both desirable and essential, but the Court of Criminal Appeal refused to interfere with a conviction because their lordships believed that the absence of written consent had not led to a miscarriage of justice or harm to the accused. A person called to serve as a juror may be ordered to stand by before a prisoner is given in charge to the jury. This course was followed in *Mansell* v. *R.* (1857), Dears. & B. 375, a murder trial, when such a person said that he had conscientious scruples against capital punishment.

Molto Diminuendo!

WHAT is the proper notice which must be given to terminate a musician's employment? We are indebted to a reader for particulars of the case of *Davson* v. *France* in which Judge WRIGHT considered this point on 30th June at the Westminster County Court. In that case the plaintiff had been engaged as a trumpeter to play at a club; subsequently he was given fourteen days' notice but was not permitted to work during the second week thereof and consequently sued for one week's salary of £14. In giving the plaintiff judgment for this sum with costs, Judge Wright remarked that it was not necessary for him to decide the customary period of notice, as fourteen days had in fact been given; however, his Honour added that on the evidence he was quite satisfied that there was a custom of fourteen days' notice where musicians were engaged otherwise than for a single day or a fixed term engagement, in the absence of any agreement to the contrary.

Confessions in South Africa

THE rules which were laid down by the judges in the Union of South Africa as a guide to police officers make it permissible to say to an accused: " You have been found in possession of such-and-such an object, and unless you can explain this I may have to arrest you." In *R.* v. *Mkuhlane* [1950] 4 S.A.L.R. 284, TREDGOLD, C.J., thought that this question from the Judges' Rules indicated that it was incumbent upon him to say something and, in view of this, he doubted whether anything said thereafter by the accused should be regarded as being of a voluntary nature. In his lordship's opinion, it was highly undesirable that, when an object is placed before an accused which is connected with a crime, and it is suggested to him that he may wish to say something about it, words should be added that if he does not make a statement there will be consequences unfavourable to him. This criticism of the Judges' Rules was not accepted by the Appellate Division of the Supreme Court of South Africa in *R.* v. *Magoetie* [1959] 2 S.A.L.R. 322, a case in which many English decisions were discussed. *R.* v. *Magoetie* was an appeal from a conviction for murder and sentence of death. It was contended on the appellant's behalf that a certain warning given to him by a detective head-constable that he would probably be arrested if he failed to give a reasonable account of his movements during the night in question or failed to furnish a satisfactory explanation of the presence of the deceased's trousers, socks and shoes on the premises occupied by him, constituted a threat or promise which induced the making of the statement and thus offended against the rule that a statement is receivable in evidence only if it is proved to have been made freely and voluntarily. This plea was rejected and MALAN, J.A., was led " unhesitatingly to the conclusion that the warning of the probability of arrest did not constitute ' a threat or promise ' held out to the appellant." It seems that this view may be difficult to reconcile with decisions such as *R.* v. *Richards* (1832), 5 C. & P. 318, and *R.* v. *Luckhurst* (1853), 6 Cox C.C. 243, but, as his lordship pointed out, English cases afford limited guidance to the courts of South Africa and clearly have no binding force so far as they are concerned.

Drunkenness

THE sober statistics on drunkenness, published last week by the Home Office (Cmnd. 807), make a somewhat depressing document. Coldly laid out are details of incidence of over-indulgence with almost indecent exposure of sex, age group and locality. Except for 1957, last year's record is the worst of all years noted in the report covering the years 1938 to 1958 inclusive. No less than 65,058 offences of drunkenness were proved in England and Wales in 1958. This represents a rate of 18·7 per 10,000 of the population aged over fourteen years. The highest rate prevalent was in the City of London with 327 proved offences per 10,000, followed by ninety-six per 10,000 in Liverpool. The Metropolitan Police District comes ninth (forty per 10,000). The lowest incidences were found in Cambridgeshire (0·6) and Cornwall (1·6). In 1957 the " merriest " month throughout England and Wales not surprisingly was December (5,885 proved offences) followed by July (5,870), with the lowest number (4,670) occurring in the shortest month (February). The statistics are innocent of diagrams, graphs or illustrative comment, for the Home Office statisticians are not of the " if-laid-end-to-end " school; perhaps it is just as well.

Fingerprints

ALTHOUGH our observations on fingerprints last week were intended to be purely speculative, they could be construed as supporting the view that everyone's fingerprints should be taken. We do not support this view. The country would never submit to such an imposition, but even if it did the enormous and elaborate organisation required could not be justified as a means of identifying unknown persons and bodies. The impact on the detection of crime would be minimal; no doubt the police could round up a few inexperienced amateurs engaged on their first jobs but otherwise the police would be little better off than they are to-day.

SOLICITOR'S RIGHT OF AUDIENCE

IDLE fellows are not the only persons to have idle thoughts. Solicitors, who are really very busy people, sometimes at odd moments allow themselves a kind of daydream about a time which may come when solicitors will have a right of audience in all the courts. It is a delectable vision, that of seeing oneself in one's mind's eye showing an admiring audience of the Bar and litigants in person in the House of Lords just how to win cases and influence judges.

Rights under the Bankruptcy Acts

Dreams sometimes come true, mostly, however, in a modified sense. Recently a solicitor successfully claimed his ancient right to appear before the High Court in a bankruptcy matter (*The Times*, 17th February, 1959). This is a right of audience expressly preserved by s. 152 of the Bankruptcy Act, 1914, which provides that nothing in the Act shall take away or affect any right of audience that any person may have had at the commencement of the Act. In 1885 a solicitor called Fox who argued a case for a trustee in bankruptcy was challenged as to his right of audience, but Cave, J., ruled in his favour under s. 151 of the Bankruptcy Act, 1883, corresponding with the current s. 152 (*Ex parte Reynolds* (1885), 15 Q.B.D. 169). The court was the Divisional Court sitting in appeals from the county court. This was held to be a bankruptcy matter in the High Court.

Much earlier, in 1867, when s. 212 of the 1861 Act was in force, a commissioner in bankruptcy refused to hear a solicitor who admitted that he was employed as a clerk by the firm to which the debtor had given instructions, and confirmed an adjudication, the debtor having given notice of his intention, through his solicitors, of showing cause against the adjudication by disputing the act of bankruptcy. Section 212 gave the right of audience in the court of bankruptcy to "every solicitor of the High Court of Chancery, now or hereafter admitted as a solicitor of the court of bankruptcy." The Court of Appeal held that the commissioner was right to refuse to hear the solicitor, because the only solicitors with a right of audience were those who represented parties and a clerk in the employ of such a solicitor was not so qualified, although himself a solicitor. It is comforting to find, even at this late date, that the debtor did not suffer, because the court held that the commissioner, having heard his protest, should have told him that he could then and there give instructions to the solicitor who was present, withdrawing instructions from his employer. The matter was sent back to the commissioner so that the debtor could be heard, but no costs were allowed (*Ex parte Broadhouse*, (1867), Ch. App. 655). As a result of this decision the question of the right of audience of a solicitor employed by a firm of solicitors representing a party in the High Court sitting in bankruptcy is now academic.

In another case in 1885 a solicitor failed in an attempt to gain a right of audience in the Court of Appeal (*Re Elderton* (1887), 4 Mor. 36). It was held simply that the Court of Appeal was not the High Court within s. 151 of the 1883 Act. The Supreme Court of Judicature (Consolidation) Act, 1925, ss. 2 and 6, show this quite clearly.

Statutory right of audience in county courts

It is interesting to compare the solicitor's statutory right of audience in the county court (County Courts Act, 1959, s. 89). *Inter alios*, "a solicitor acting generally in the proceedings for a party thereto, but not a solicitor retained as an advocate by a solicitor so acting," has a right of audience. There is a proviso that a solicitor's right to address the court "shall not be excluded by reason only that he is in the permanent and exclusive employment of any other solicitor." A court may refuse to hear a person claiming to address the court as a solicitor unless he has signed and delivered to the court a statement of his name and place of business and the name of the firm (if any) of which he is a member. Persons other than solicitors and counsel are allowed to appear instead of any party by leave of the court only. This applies to a solicitor-managing clerk, even if he has had the general conduct of the proceedings, according to *R.* v. *Oxfordshire County Court Judge* [1894] 2 Q.B. 440. The relevant provisions in s. 72 of the County Courts Act, 1888, were in all material respects identical with those of the current section. It was held that the solicitor must be "the solicitor acting generally in the cause," and *Ex parte Broadhouse*, *supra*, was followed, and as that was the ground of the exclusion of the solicitor, the question of a solicitor-managing clerk's right of audience under the proviso did not arise. Cave, J., nevertheless expressed his "strong suspicion that the clause in question was intended to put an end, in favour of managing clerks who are solicitors, to the question whether they could address the court in matters in which they had been acting generally for the party." He held, however, that he was bound by authority in the matter.

The question who is the solicitor acting generally in the action for a party is one of fact for the county court judge (*R.* v. *Spooner* (1868), 18 L.T. 325). If the solicitors on the record are *A & Co.*, and *B*, a solicitor in their employ, appears in court in order to conduct the case, the county court judge really has no option but to refuse to hear him. He is a solicitor, and is not the solicitor acting for the party because his employers are, and "there can only be one attorney for a party at a time" (*per* Blackburn, J., in *R.* v. *Spooner*, above). It is true that the words "any other person allowed by leave of the court to appear" might otherwise have covered the case, but if some other solicitor is already retained, his employee cannot appear, because that would have the absurd result that the party would have two solicitors at one time. The remedy for a solicitor employing a solicitor advocate is either to make such employee a member of the firm or to put all his litigation in the name of the employee. The latter course raises complications and does not seem very practical.

Appeal to Court of Appeal on right of audience

It is rare for a solicitor to take the drastic course of appealing to the Court of Appeal when denied a right of audience. Bowen, L.J., did not doubt that that was possible in 1885, "either by applying for a mandamus, or possibly under (the County Courts Act, 1856) 19 and 20 Vict., c. 108, s. 43, which substitutes for a mandamus a rule to compel audience." (*R.* v. *Registrar of Greenwich County Court* (1885), 15 Q.B.D. 54.) In that case a solicitor undertook the rôle of a village Hampden in contending that he was entitled at a public examination to question the debtor under s. 17 (4) of the Bankruptcy Act, 1883, without providing a written authority. The subsection, now reproduced as s. 15 (4) of the 1914 Act, enabled a creditor who has tendered a proof, or his representative authorised in writing, to question the debtor

concerning his affairs and the causes of his failure. The registrar refused to hear the solicitor without producing his written authority and the Incorporated Law Society supported the solicitor's refusal on the ground that s. 17 (4) did not apply to solicitors. On an application to the Divisional Court calling on the registrar and the debtor to show cause why the solicitor should not be permitted to question the debtor, the court was of opinion that only parties litigant could apply for the rule. On appeal, Brett, M.R., was doubtful whether a solicitor could apply for the rule, but in any event held that a solicitor was a representative and that that was his normal character, as distinguished from counsel, who could only act for the client in court, and in court had the power to act without asking his client what he shall do. It was, according to Brett, M.R., a matter entirely for the registrar whether he should ask all solicitors, or any particular solicitor in any particular case.

The law being clear, this is not a situation which is likely to recur. Nevertheless the case also points a moral to those solicitors who perchance have indulged in the daydream of having a right of audience in all courts, whether by means of *ad hoc* legislation or by fusion of the two branches of the profession. Can he be both a representative and counsel at the same time? Counsel has the advantage that he is not a representative; "he has the power to act without asking his client what he shall do. He has no master, but he is the conductor and regulator of the whole thing" (*per* Brett, M.R., at 15 Q.B.D. 58). If solicitors are to have audience in the higher courts, either the superior position of counsel must be completely jettisoned with the loss of such advantages as it undoubtedly brings in the administration of justice in those courts, or solicitors must be content to maintain a peaceful co-existence with counsel in those courts, but without the benefit of counsel's powers.

M. S.

THE TOWN AND COUNTRY PLANNING ACT, 1959—II

THE first part of this article described the return to the open market value basis for the assessment of compensation on the compulsory acquisition of land, the compensation provisions being contained in Pt. I of the Act. Before going on to Pt. II, it may be well to mention here two points which should be of particular interest to readers.

1954 Act, s. 33

First, s. 1 of the new Act repeals, among other provisions, s. 33 of the 1954 Act. This is the section which has, in the writer's opinion, been much, though no doubt conveniently, misused as a means of extracting from the local authority, whether or not the circumstances in which the section was intended to be used exist, a statement that there is no proposal to acquire the property concerned compulsorily within five years. There has been no point in using the procedure since 16th July, when the Act received the Royal Assent, and the procedure itself will cease to be law on 16th August next.

Compensation for planning restrictions

Secondly, the new Act in no way affects the basis of compensation for planning restrictions, i.e., for the refusal or conditional grant of planning permission, under the 1954 Act. This compensation is still limited to the amount of any unexpended balance of established development value attached to the land as a maximum, and even then the various limitations on compensation in the 1954 Act still apply, e.g., there is no compensation for refusal of permission to change the use of property. It is, therefore, most important that a prospective purchaser of property for development should be advised to make sure that there is a planning permission in force for his development before he contracts to purchase, or should be clearly informed of the financial risk he runs. If there is a valid planning permission he is safe, because under s. 22 of the 1947 Act, as amended by s. 38 of the 1954 Act, if the permission is revoked or modified, he is entitled to compensation for depreciation of his interest based on open market values.

Part II

Dealings in land by local authorities

Part II of the new Act deals with the completely different subject, which has nothing to do with Town and Country Planning, of "Acquisition, Appropriation and Disposal of Land by Local Authorities and other Public Bodies." This Part is in fact an instalment in the Government's programme to free local authorities from a measure of central control, and it frees them from the necessity of obtaining Ministerial consent to very many, but by no means all, of these transactions. In particular, s. 26 frees an authority from obtaining such consent for the disposal of land except in the cases mentioned in the section, of which the more important are dispositions of open spaces, of land compulsorily acquired and not subsequently appropriated for some purpose other than that for which it was acquired, of houses in respect of which an Exchequer subsidy has been paid, of land in clearance areas or comprehensive development areas, or of common land, and dispositions of any land for less than the best price, consideration or rent reasonably obtainable.

Protection for purchasers and others

It was pointed out at 102 SOL. J. 818 that this last provision made the task of the solicitor acting for a purchaser somewhat difficult, and it was suggested that words should be added to the effect that a purchaser was not concerned to inquire as to whether the price, consideration or rent was the best that could reasonably be obtained. The seriousness of not obtaining the consent of the appropriate Minister where required was subsequently emphasised by the decision in *Rhyl Urban District Council* v. *Rhyl Amusements, Ltd.* [1959] 1 W.L.R. 465; p. 327, *ante*, where two leases by the council of long standing were held invalid for want of a Minister's consent. At the instance, the writer believes, of The Law Society, the matter was debated and a clause inserted in the Bill, which is now s. 29 of the Act.

This section is most satisfactory as it provides that, where on or after 16th August an authority purports to acquire, appropriate or dispose of land then in favour of a person claiming under the authority, the acquisition, appropriation or disposition shall not be invalid by reason that the consent of a Minister is not given, and such person shall not be concerned to see or inquire whether any such consent has been given.

Thus one conveyancing pitfall is removed, the details of Pt. II are made of interest only to solicitors advising authorities, and the old argument as to whether or not a

Minister's consent was a document of title which should be handed over on completion will worry us no more. But it should be noted that the relief applies only to transactions on or after 16th August ; earlier transactions of this kind on the title will have to be watched as before.

Part III

Part III of the new Act, which is headed " Administrative Procedures and Related Proceedings," is of general importance and interest to readers. Most of its provisions are designed to carry into effect recommendations of the Franks Committee on Administrative Tribunals and Inquiries.

Appeals to the High Court

Even while the Law Lords were giving their opinions in *Pyx Granite Co.* v. *Ministry of Housing and Local Government* (1959), *The Times*, 7th July, that the " inalienable " right of the subject to have access to the courts could only be taken away by express statutory provision and not just by the expression in s. 15 of the 1947 Act as applied by s. 16 of that Act, that the Minister's decision on a planning appeal shall be " final," there was passing through their House a provision, s. 31 in the new Act, which though it does not take the right away severely restricts it.

This section provides that if any person, or the authority concerned, is aggrieved by and desires to question any order under the 1947 Act, or any decision of the Minister, specified in the section on the ground that it is not within the power of the 1947, 1954 or 1959 Act, as the case may be, or that any of the relevant requirements have not been complied with, he may within *six weeks* from the date on which the order is confirmed or the decision is made apply to the High Court, and the High Court may quash the order or decision if satisfied that it is not within the powers of the Act or that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements. Subsection (7) provides that, subject to this application, the validity of the order or decision " shall not be questioned in any legal proceedings whatsoever."

The orders concerned are planning permission revocation or modification orders (1947 Act, s. 21), orders for discontinuance of authorised uses (1947 Act, s. 26), tree preservation orders (1947 Act, s. 28), building preservation orders (1947 Act, s. 29), and orders defining areas of special control for advertisements (1947 Act, s. 31). The decisions of the Minister concerned are decisions on planning applications called in by him under s. 15 of the 1947 Act, decisions on planning appeals under s. 16, decisions relating to purchase notices under s. 19 of the 1947 Act, decisions either at first instance or on appeal on applications for consent to fell or demolish under tree or building preservation orders or for consent to display advertisements, and, on certain related matters, directions as to the review of planning decisions under s. 23 or s. 45 of the 1954 Act on claims for compensation under that Act, and any decision on appeal as to the granting of a certificate of alternative development under s. 6 of the 1959 Act mentioned in the first part of this article.

Similar provisions providing for a special application to the courts and prohibiting other forms of recourse have for long been in force in relation to other administrative matters, such as development plans themselves under the 1947 Act, and compulsory purchase orders, and their application to the orders detailed cannot be reasonably criticised, as certainty about the validity of such orders is most desirable. Their application to the various forms of decision seems, however, to be questionable and the practical effect doubtful.

Challenging validity of planning decisions

In recent years it has become fashionable to question planning decisions of the Minister and of local planning authorities by application for a declaration that the decision, or part of it, is invalid or of no effect. Thus in the *Pyx* case the company claimed to have had permission for the development concerned under the Town and Country Planning General Development Order, 1950, the relevant terms of which repeated the earlier Order of 1948, and accordingly that a refusal of planning permission in 1949 for part of it and the conditional grant of permission in 1953, in each case by the Minister, for other parts were of no effect, and further that the conditions were invalid. If the new provisions had been contained in the 1947 Act, would the Pyx Company not have been precluded from seeking a declaration a long time after the decisions, or could it be said that the decisions were a valid exercise of the Minister's powers in the sense that he had applications before him which he duly determined on their merits, and were therefore not challengeable by the special procedure, but were simply of no effect and that therefore a declaration could be sought and was not barred by subs. (7) ? Or suppose in such a case where the six weeks have elapsed the developer goes ahead with his development regardless of any refusal or conditions claiming permission under the Order ; the planning authority serve him with an enforcement notice to comply with the conditions ; there seems no reason why the developer should not defend the notice either before the justices or by application for a declaration in the High Court that the enforcement notice, as distinct from the Minister's decision, is of no effect because there is a permission free of the conditions under the Order. Or again, if the six weeks have elapsed, what is to prevent the developer making another application for permission, obtaining another similar decision from the Minister and then applying within six weeks of the new decision ?

Where the planning decision is one of the planning authority and not of the Minister, as in the case of *Fawcett Properties, Ltd.* v. *Buckingham County Council* [1959] 2 W.L.R. 884 ; p. 470, *ante*, where the validity of an agricultural occupancy condition is in question, there is no question of any six weeks' bar ; the person concerned is undoubtedly free to apply for a declaration a long time afterwards. This seems to create an anomalous situation. Suppose there are two cases where the same condition has been imposed but in one by the Minister and in the other by the planning authority, what justification is there for the statutory restriction in the one case and not in the other ?

Where the construction rather than the validity of the decision is in question (as, e.g., in *Creighton Estates, Ltd.* v. *London County Council* (1958), *The Times*, 20th March, where it was held that permission allowing the use of premises " as offices and a hostel by the British Broadcasting Corporation " did not restrict such use to use by the B.B.C. only, and, having regard to the letters of application, was a permission for use as offices *or* a hostel), there would appear to be no restriction on access to the High Court whether the decision be that of the authority or the Minister.

The new section in any case only applies to orders and decisions made on or after 16th August.

Where s. 31 applies the court can only quash the order or Minister's decision. Where the decision is one on appeal this leaves outstanding the original decision of the authority, which may be no more acceptable to the applicant than the Minister's. The remedy here would seem to be either to apply to the High Court for a declaration that the authority's

decision is invalid, or, in appropriate cases, to submit a fresh application for planning permission in the expectation that in dealing with it the authority or the Minister would pay due regard to the views of the court.

There is much to be said for giving a simple appeal on law to the High Court from decisions either of an authority or the Minister on planning applications.

Indeed, such an appeal is given either to the applicant or to the planning authority by s. 32 of the Act, but only in relation to decisions of the Minister, whether at first instance or on appeal, under s. 17 of the 1947 Act on applications to determine whether proposed operations or uses do or do not constitute development. This will probably prove to be a very useful section.

Procedure at inquiries

So much for applications and appeals to the High Court. The next section, s. 33, provides for the insertion of a new section in the Tribunals and Inquiries Act, 1958, applying to statutory inquiries generally, and not only planning ones, and enabling the Lord Chancellor to make rules of procedure for such inquiries.

Section 34 is of minor importance. It removes the restriction contained in s. 168 of the Local Government Act, 1933, on the hearing of counsel and expert witnesses without the leave of the Minister of Housing and Local Government where a county council direct the holding of an inquiry into an application by a parish council for the making of a compulsory purchase order.

Purchase notices

Section 35 improves the purchase notice procedure in s. 19 of the 1947 Act. The greatest improvement is the removal of the necessity for confirmation of the notice by the Minister where the authority on whom it is served or some other authority are willing to comply with it (subs. (1)). The section then (subs. (2)) rectifies the obviously unintended result of subs. (2A) introduced into s. 19 by s. 70 of the 1954 Act disclosed in *R.* v. *Minister of Housing and Local Government; ex parte Rank Organisation, Ltd.* [1958] 1 W.L.R. 1093. Subsection (3) gives a statutory right to a person serving a notice, or to a local authority concerned, to a hearing in a case where the Minister is proposing not to confirm a notice; it also extends the Minister's powers in dealing with a notice. Where the Minister's decision on a notice is quashed under s. 31 above, subs. (4) of s. 35 gives the owner concerned the right to serve a new notice.

Notice of planning applications

Sections 36 and 37 are of wide application and great importance. By s. 36, an applicant for any class of development designated for the purpose of the section in a development order made by the Minister must advertise his application in a form to be prescribed by the order in a local newspaper, and twenty-one days at least are allowed in which any person may submit representations relating to applications to the local planning authority. By s. 37, any applicant for planning permission who is not either the freeholder or tenant of the whole of the land comprised in the application must give notice of the application to every person who within twenty-one days ending with the date of the application was to his knowledge either a freeholder or lessee with not less than ten years of his lease unexpired, and, if he does not know any or all of such persons, he must advertise the application in a local newspaper (s. 37 (1) and (2)). Where there is an agricultural tenant he must be given personal notice in every case even when the application is by the freeholder (s. 37 (3)). Twenty-one days at least are to be allowed for the persons concerned to make representations to the local planning authority (s. 37 (4)), who do not have to send copies of the representations to the applicant or inform him of their receipt, and a certificate of compliance with the section in a form to be prescribed by the development order has to be given by the applicant to the authority (s. 37 (1), (2) and (3)). Subsection (6) makes it an offence, with a fine not exceeding £50, knowingly or recklessly to give a false or misleading certificate.

Section 36 is designed to some extent to alleviate the grievance often expressed by neighbours that planning permission is sometimes given for development objectionable to them without their ever having any say in the matter; the explanatory memorandum issued on the Bill stated that it was the intention of the Minister to designate certain very limited types of development " which might be considered bad neighbours by public opinion in the locality."

The requirement of s. 37 for notice to be given to agricultural tenants is a long overdue provision, since the grant of planning permission removes the protection they enjoy under the Agricultural Holdings Act, 1948; it is for this reason that even a freeholder has to give such a tenant notice. In the case of any other tenant, however, the owner-applicant does not have to give the tenant or any sub-tenant notice, nor for that matter does a tenant or sub-tenant applicant, even if only a weekly tenant, have to give the owner notice. This is because it was the Government's view that the giving of notice between such persons is a matter to be dealt with in the contract of tenancy and not in the Act; readers drawing leases and tenancy agreements will no doubt act appropriately.

Neither s. 36 nor s. 37 gives either the applicant or any objector the right to be heard by the authority, but some authorities may be prepared to give an informal hearing. There is no appeal by an objector against a decision of the authority to grant permission. Where the authority refuse to grant permission or grant it subject to conditions the applicant has the usual right of appeal to the Minister, and must serve a fresh set of s. 37 notices (s. 37 (5)).

The path of any prospective purchaser applicant is thus now beset by possible difficulty and delay, and it may well pay him to persuade the owner to put the application in in his own name.

Enforcement procedure

The last section in Pt. III, s. 38, is the one designed to overcome the difficulties in enforcement disclosed in *Cater* v. *Essex County Council* [1959] 2 W.L.R. 739; p. 414, *ante* (and see p. 553, *ante*). Under s. 23 of the 1947 Act an enforcement notice may be served either in respect of development carried out without permission or of non-compliance with a condition on a permission. Section 58 and Sched. VII to the new Act amend s. 23 and s. 24, to cover non-compliance with a limitation as well as with a condition, and s. 38 applies these two sections to non-compliance with any limitation on development permitted by a general development order as they apply to non-compliance with a condition. So now, for example, where land is used as a caravan site for more than twenty-eight days in a year without any permission other than that contained in the 1950 General Development Order for this period an enforcement notice can be served, requiring the limitation to be complied with by discontinuing the use.

When the relevant clause was originally introduced it contained a subsection giving planning authorities a year within which to serve fresh notices on the new basis in place of any ones which were bad under the decision in *Cater*, even though they would otherwise be out of time for serving a fresh notice, but this subsection was subsequently omitted. There is, however, no reason why an authority, who has served a notice bad under *Cater*, but who will be on or after 16th August still within the four-year time limit, should not serve a fresh notice in correct form under the new section. To avoid any arguments as to what is a condition and what a limitation, the section provides that a notice served before or after the Act will be equally valid if it refers to either; this will also protect those authorities who, in anticipation of the *Cater* decision, have been serving notices in such cases requiring compliance with an implied condition to discontinue the use at the end of the twenty-eight days.

Part IV: Planning blight

Part IV of the new Act (ss. 39 to 43) provides the remedy for planning blight, though needless to say this inelegant if popular expression does not appear in the Act. The cases here concerned are not cases where planning restrictions have made land of no reasonably beneficial use (those are dealt with by the purchase notice procedure), but where land or property is still usable but has become unsaleable at a reasonable price, e.g., a house with a proposed road through it.

The various types of blight, e.g., designation for compulsory acquisition, definition in the development plan for the purposes of a public authority, or road proposals of various kinds, whether in the plan or not, are specified in s. 39 (1). It should be noted that they all relate to specific proposals contemplating the eventual acquisition of the property by a public authority and do not include general planning restrictions such as a green belt.

The provisions only give relief in the case of (1) premises the whole or part of which is a dwelling-house; (2) small business and other premises not exceeding a rateable value to be fixed by the Minister (that at present contemplated being £250), and (3) agricultural units (s. 39 (4) and (5)). They can only be taken advantage of by resident owner-occupiers in the case of dwelling-houses, or by owner-occupiers in the other two cases. Owner for this purpose includes a lessee with not less than three years of his lease unexpired (s. 43 (7)). The occupation of the owner must have been for six months ending with the date on which he serves his notice to acquire, or, if the property is vacant, for six months ending not more than six months before that date (s. 43 (2), (3) and (4)). It is, therefore, important not to allow property to remain vacant for more than six months if advantage is to be taken of the sections.

If the qualifications, including the unsaleability of the property at a reasonable price (s. 39 (2) (*d*)), are fulfilled, the owner may serve on the authority responsible for the particular proposal concerned notice to purchase the whole of his interest in the *entirety* of the property (s. 39 (2) and (3)). The authority may object on the ground that the qualifications, the onus of proving which is on the owner, are not fulfilled, or that they do not propose to acquire any part of the property, i.e., that they are dropping their proposal, the onus of proving which is on them (s. 40). If the authority object, the dispute is referred to the Lands Tribunal for determination (s. 41).

Under s. 9 of the Act, as already mentioned, any damping effect of the blight on the value of the property has to be disregarded in assessing the compensation, but, in case the owner should be disappointed with the amount, he may withdraw at any time up to six weeks after the determination of the amount, unless the authority have previously entered on the land, as they are entitled to do.

If the reader is faced with a blighted property which does not fulfil the qualifications, e.g., it is held by the owner for investment, his best course will be to try and persuade the authority to buy it by agreement in advance of requirements. On this the Minister said in the House of Commons Committee Stage debates: "Hitherto the bias of Government policy has been against their doing that . . . now . . . all that is being changed, and the Government will in future be encouraging local authorities to meet cases of hardship by purchasing in advance." In the case of road proposals, this is encouraged by ss. 48 and 49 of the new Act.

Miscellaneous

It only remains to mention a few of the sections in Pt. V (Miscellaneous and Supplementary Provisions), namely, s. 45, which makes consequential alterations in the amount of compensation for damage to requisitioned land; s. 46, which gives power to acquire compulsorily up to ten years in advance of requirements for town development under the Town Development Act, 1952; and ss. 48 and 49 already referred to.

This completes a short review of this important new Act with its miscellaneous and complicated content, an Act which will undoubtedly bring benefits to many and result in greater justice being done.

R. N. D. H.

(Concluded)

"THE SOLICITORS' JOURNAL," 30th JULY, 1859

On the 30th July, 1859, The Solicitors' Journal contained a letter from Mr. W. H. Barber, a solicitor who had been seeking public redress for a wrongful conviction and a sentence of transportation: "Sir, You will have perceived from the estimates that the Government is about to propose to Parliament 'a donation of £5,000 to W. H. Barber in consideration of his sufferings and distressed circumstances.' The select committee appointed by the House to inquire into the allegations in my petition to Parliament reported that such allegations were 'substantially proved.' Now, the petition alleged that I had been erroneously prosecuted by the Treasury, that the conviction was obtained by the wrongful shutting out of evidence which would have proved my innocence, that in Norfolk Island I was treated by the Government officer with 'systematic, invidious and revolting cruelty' for upwards of two years and that (as was distinctly proved before the House of Commons select committee) by this confessedly erroneous prosecution, I had sustained actual pecuniary loss to more than double the amount now proposed as 'a donation.' The committee's report adds that the circumstances of my case were 'peculiar and exceptional' and that I have 'strong claims on the favourable consideration of the Crown.' I cannot but feel that you, sir, will consider that the proposed vote and the terms in which it is conveyed fail to do me that justice which I am entitled to expect . . . When this wrongful prosecution was instituted I was in prosperous circumstances . . . The reference to 'distressed circumstances' appears to me to have been most unnecessary and is in itself calculated to do me, as a solicitor, more injury than a sum of £5,000 could repair. It is not to the charity of the Government that I have for the last ten years been appealing but to its sense of justice. I have the honour to be, sir, your very obedient servant, W. H. Barber."

BANK HOLIDAY EXERCISE

Of late, suggestions have been made in the newspapers that the time has come to consider the desirability of continuing statutory bank holidays. It has been pointed out that overcrowding of roads and resorts is intensified to everyone's discomfort by the existence of bank holidays. The vast majority of people receive paid holidays of at least one week's duration and nobody would be greatly harmed if bank holidays as such were discontinued. This line of argument seems persuasive and by way of a tribute to what may prove to be one of the last August bank holidays this article has been written as an exercise to see just how far legal tentacles have spread since the enactment of the Bank Holidays Act, 1871.

Bank Holidays Act, 1871

It seems that the intention of Sir John Lubbock in sponsoring the 1871 Act was limited to assisting bank employees. Before the passing of the Act if a bank closed except on Sundays, Good Friday and Christmas Day it committed an act of bankruptcy ; consequently bank staffs were bound to be on duty at all other times in the year. Accordingly to ease the lot of bank employees, the 1871 Act provides that Easter Monday, Whit Monday, the first Monday in August, 26th December if a weekday and such other days as may be from time to time specially appointed by royal proclamation, are made close holidays in all banks in England. Special provision is made to cover the business of bankers. Bills and notes payable on any bank holiday are to be payable, or to be noted or protested, on the next following day. Notice of dishonour, presentation and forwarding of bills and notes is similarly to be given or made on the next following day. It is the practice for banks to display notices before and during bank holidays setting out the effect of the Act on bills and notes at that time.

Extension of the 1871 Act

Although it was not the general practice for all employers to close on bank holidays for some years after 1871, the first statutory extension of the Act occurred only a few years later. The Holidays Extension Act, 1875, provides that when 26th December falls on a Sunday the following day shall be a bank holiday ; it further enacted that bank holidays should be public holidays in docks, customs houses, inland revenue offices and bonding warehouses. The next statutory reference to bank holidays appears in the Bills of Exchange Act, 1882, originally introduced into the House of Commons by Sir John Lubbock. Section 14 of the 1882 Act provides that when the last of the three days of grace, granted for the computation of the time of payment of a bill not payable on demand, falls on a bank holiday (other than Christmas Day or Good Friday), or when the last day of grace is a Sunday and the second day of grace is a bank holiday, the bill is due and payable on the succeeding business day. The 1882 Act further provides, by s. 92, that where by that Act the time limited for doing any act or thing is less than three days, in reckoning time, non-business days—which include bank holidays—are excluded.

Effect on the courts

Although the Rules of the Supreme Court eschew mention of bank holidays as such, Ord. 63, r. 6, dating from 1883, lays down that the offices of the Supreme Court must be open on every day of the year except Sundays, Good Friday, Monday and Tuesday in Easter week, Whit Monday, the first Monday in August, Christmas Day and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation or thanksgiving, and the day appointed to be kept as the Sovereign's birthday. Order 64, r. 2, further provides that where any limited time less than six days from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day and Good Friday must not be reckoned in the computation of such limited time.

By contrast the Metropolitan Police Courts (Holidays) Act, 1897, refers to a bank holiday as such. Section 1 thereof authorises the Secretary of State by order to close the metropolitan police courts on any day appointed under the 1871 Act to be observed as a bank holiday.

General recognition of bank holiday

The general acceptance of the term " bank holiday " to embrace spheres far removed from the business of banking can be seen in a variety of statutes passed during recent years. Section 152 (1) of the Factories Act, 1937, defines " bank holiday " as meaning a holiday under the Holidays Extension Act, 1875. By s. 74 (1) of the Shops Act, 1950, " bank holiday " includes any public holiday or day of public rejoicing or mourning.

More protracted references to " bank holiday " are to be found in the Representation of the People Act, 1949 ; such a day, *inter alia*, must be disregarded for purposes of the timetable and the local elections rules set out therein. The Customs and Excise Act, 1952, s. 3, makes several references to bank holidays in connection with the holidays to be kept in the offices of customs and excise ; s. 3 (3) of the 1952 Act in effect extends the Bank Holidays Act, 1871, to include power to appoint and alter days to be kept as holidays in the customs and excise.

Draftsman's holiday

The references to bank holidays scattered throughout the statutes and considered in this article indicate that some drafting problems may well arise in the event of statutory abolition of bank holidays. Assuming that serious consideration in official quarters is being given to extinguishment of bank holidays, let us spare a thought this August bank holiday to the draftsman pondering the problem. Perhaps he is the man sitting next to you, apparently half asleep, in the deck chair on the beach ; more likely, however, he is that infuriating dawdler who will not allow you to overtake on the intolerably crowded A.23.

N. D. V.

Honours and Appointments

Mr. William Henry Hughes has been appointed deputy chairman of the Court of Quarter Sessions for the County of the Isle of Ely.

Mr. Hugh Eames Park has been appointed Recorder of the Borough of Penzance and also deputy chairman of the Court of Quarter Sessions for the County of Cornwall.

Landlord and Tenant Notebook

LETTING APARTMENTS AND LODGINGS

WE are approaching the time of year when practitioners who are not on holiday themselves are likely to be consulted by tenants who let apartments and lodgings, and I propose in this article to discuss some of the problems which may call for consideration.

The lettings may themselves create or not create tenancies. I will deal with that question later; but I will start with a review of some of the authorities on the effect of restrictive covenants which may lead to trouble between seaside landladies and the like and *their* landlords.

Three kinds of restrictive covenants may affect such lettings: covenants limiting the use of the demised premises to that of a private house, covenants against trade, and covenants against alienation.

" As a private dwelling-house "

The reduction of private incomes by the effects of international war induced people who at one time would never have contemplated the taking in of lodgers to do something of the sort, and has occasioned several " nice point " disputes.

Before this, a decision of Kekewich, J., upheld by the Court of Appeal (*Porter* v. *Gibbons and Bissett* (1904), 48 SOL. J. 559 and 814 (C.A.)), provided us with authority that a covenant limiting user to that of a private dwelling-house would not be infringed by taking in friends and acquaintances: " She has not kept a boarding-house: she has merely taken in these friends as sharers of her housekeeping liability."

No reference was made to that decision in *Thorn* v. *Madden* [1925] Ch. 847, in which the plaintiffs had sub-let a house for seven years, the sub-lease repeating restrictive covenants in their own lease; in one of these the sub-lessee covenanted that he would not use the dwelling-house for the purpose of any trade or business or otherwise than as a private dwelling-house or professional residence only. The defendant, an assignee of the sub-lessee, had " admittedly temporarily taken in friends and others as paying guests, who have been secured by private notifications and never by public announcement of the address of the said premises." Two sentences from Tomlin, J.'s judgment show where the line is to be drawn: " I think that where, as here, a lady is of set purpose occupying a house which she is aware is beyond her means and, for the purpose of supplementing her means and enabling her to live in the house, is securing, to use a neutral term, visitors to come and live there for short or long periods upon payment for board and residence, it is impossible to say that the house is being used as for a private residence only . . . This is not like a case between two friends, when to the one desiring to pay a visit the other says: 'I cannot afford to keep you, but I shall be delighted to see you if you will pay.' "

In *Tendler* v. *Sproule* [1947] 1 All E.R. 193 (C.A.), the covenant was similar, and the defendant (a protected tenant) found himself on the wrong side of the line. An attempt to distinguish *Thorn* v. *Madden*, in that the defendant, a statutory tenant, was not shown to have taken actual steps to find lodgers, failed, and Morton, L.J., cited the passages from Tomlin, J.'s judgment set out above. The learned lord justice also cast some doubt on the authority of *Porter* v. *Gibbons and Bissett*, querying whether the decision was well founded; it is hard to see why, as the fact that the lodgers were friends or acquaintances (Kekewich, J., omitted the latter) was clearly the *ratio decidendi* and would be sufficient to distinguish the older decision.

Then, in *Downie* v. *Turner* [1951] 2 K.B. 113 (C.A.), dealing with the question whether a tenant's covenant not to use the demised premises for any other purpose than as a private dwelling-house had been waived by acceptance of rent; and holding that it had because of its juxtaposition to a covenant against sub-letting (not continuous), Somervell, L.J., made the disturbing remark: " A tenant does not cease to use his house as a private dwelling-house because he has a married couple in it "; Jenkins, L.J., however, was " content, for the purposes of the present case, to assume that a mere sub-letting of part of the premises for residential purposes would in itself constitute a breach of the covenant as to user."

" A "

Where the covenant is said to have been infringed by some agreement which confers exclusive possession, Somervell, L.J.'s *dictum* should be studied in the light of another group of cases. Those familiar with Mr. Megarry's work on the Rent Acts will recall that when expounding the " let as a separate dwelling " of the Increase of Rent, etc., Restrictions Act, 1920, s. 12 (2), in chap. 3, he devotes separate sections to those separate words, section 4 dealing with the word " A." And in the authorities which I have so far mentioned, little or no attention was paid to what one might call the quantitative aspect of the question.

But in the unreported case of *Berton* v. *London and Counties House Property Co.* (17th November, 1920), the Court of Appeal is said to have held that the letting of a house in separate tenements was a breach of a covenant to use the house as *a* private dwelling-house; the decision was referred to with approval by Atkin, L.J., in *Berton* v. *Alliance Economic Investment Co.* [1922] 1 K.B. 742 (C.A.). Again, in *Barton* v. *Keeble* [1928] Ch. 517, Eve, J., after saying that " a private dwelling-house " is capable of more meanings than one, according to the context in which it is found, made the categorical statement: " The premises are to be used as a private dwelling-house only, any sub-division is inconsistent with that." The last word—so far—on this point appears to have been spoken by Romer, L.J., in *Dobbs* v. *Linford* [1952] 2 T.L.R. (Pt. II) 727 (C.A.), in which a tenant was held to have infringed a covenant not to use the premises for any purpose other than as a private dwelling-house by letting the top floor to the defendant (and another room to someone else): " It does not appear to me that there is room for that kind of contention [a contention that an accompanying covenant against sub-letting showed that sub-division was contemplated] where the agreement contemplates that the subject-matter of the demise is to be used as one dwelling-house and not more."

The effect appears to be that " taking in lodgers " may or may not, but sub-letting will, infringe a covenant of this kind; and modern conveyancers may have this in mind when they are careful to use some such expression as " a single dwelling-house " or " single occupation."

Covenant against trade

In the above-mentioned cases of *Thorn* v. *Madden* and *Tendler* v. *Sproule*, the covenants specifically prohibited the

carrying on of trade or business; in *Barton* v. *Keeble* the covenant read " . . . for any purpose whatsoever other than for the purpose of a private dwelling-house, wherein no business of any kind is carried on," and Eve, J., held that the last words merely added to the stringency of the covenant to use as a private dwelling-house. A breach of a covenant to use as a private dwelling-house makes it unnecessary to consider whether there has been a breach of an accompanying covenant against trade; but according to *dicta* in *Rolls* v. *Miller* (1884), 27 Ch. D. 71 (C.A.), in which the use of a house as a charitable institution, namely, a " Home for Working Girls," was held to infringe a covenant against trade and business, the carrying on of a lodging-house is a business. In *Barton* v. *Reed* [1932] 1 Ch. 362, Luxmoore, J., said that the sub-letting of premises in suites of apartments with or without the provision of any " other " service was a business, but the actual facts of the case were that a sub-tenant had converted a house into flats, let partly furnished, contracting to supply her tenants with hot water and to clean hall and staircase, etc. In *Tompkins* v. *Rogers* [1921] 2 K.B. 94, Lord Coleridge, C.J., had no hesitation in concluding that the taking in of lodgers or paying guests was a use for business purposes.

These authorities show, then, that the ordinary seaside landlady who lets apartments is, for covenant purposes, carrying on a business.

Covenant against sub-letting

Whether a mere restriction on sub-letting the whole or any part of the premises (the importance of the " or any part " was demonstrated by *Esdaile* v. *Lewis* [1956] 1 W.L.R. 709 (C.A.)) will affect the " letting " of apartments or lodgings is, of course, apt to be a delicate question, especially since the dividing line between tenancies and licences has become so blurred. When a carefully drafted covenant specifies not only sub-letting but parting with possession, sharing occupation and the like, there is no such difficulty; and in one old case, *Roe d. Dingley* v. *Sales* (1813), 1 M. & S. 297, something like a *Neale* v. *Del Soto* [1945] 1 K.B. 44 agreement—the person let in was to have the use of the back chamber exclusive of the defendant tenant's family, and the saw-lodge and part of the cow-shed, sharing the rest of the house with the defendant's family—was held to constitute a breach of a covenant not to demise, grant, or let the demised premises or any part or parcel thereof; but not long after, in *Doe d. Pitt* v. *Laming* (1814), 4 Camp. 77, Ellenborough, C.J., treated with some scorn the idea that letting a room in a house to a clerk as a lodger was more than the grant of a licence. In *Porter* v. *Gibbons and Bissett*, *supra*, Kekewich, J., thought that the arrangement did not amount to a sub-tenancy.

Business premises ?

Lastly, while the scheme of Pt. II of the Landlord and Tenant Act, 1954, is such that a tenancy may be within its scope at one time and beyond that scope at another—see the provisions relating to termination and notices to quit in s. 24 (3)—so that it may not be easy for a tenant to qualify for protection by seasonal letting of lodging and apartments, it may be observed that here, too, the question whether grants create tenancies or confer mere licences may be of importance. *Bagettes, Ltd.* v. *G.P. Estates Co., Ltd.* [1956] Ch. 290 (C.A.) showed that such a sub-letting as was held to be a business in *Barton* v. *Reed*, *supra*, could not give rise to the statutory rights, for the simple reason that if premises were sub-let the mesne tenant did not occupy them. But there is reason to suppose that so-called " lettings " on the lines, say, of those described in *Rolls* v. *Miller*, *supra*, or *Tompkins* v. *Rogers*, *supra*, would be distinguishable; this because, as Denning, L.J., said in *Hills* (*Patents*), *Ltd.* v. *University College Hospital* (*Governors*) [1956] 1 Q.B. 90, possession in law is single and exclusive, but occupation may be shared with others or had on behalf of others.

R. B.

COSTLY NIGHTCAP

MR. BANDS, solicitor of the Supreme Court, was prone to nightmares. His wife had warned him about toasted cheese late at night, but one evening he was tempted. He had hardly closed his eyes before he seemed to be sitting in the county court listening to the following :—

" This is an appeal, your honour, on the subject of costs, from the decision of your learned registrar—a darned sight *too* learned a registrar, if your honour will pardon the expression.

The defendant, your honour, is the well-known actor, Ebenezer Guffin, who purchased from my client, the plaintiff, several tons of Brussels sprouts of the well-known ' diamond cluster ' brand. The defendant, your honour, by the nature of his profession travels around the country from theatre to theatre, and although he knew that the plaintiff wished to serve a summons upon him, all his earnest efforts to make himself available for service seemed to be fated with ill-luck. The plaintiff, therefore, took the step of putting the matter in the hands of process servers. The defendant was at the time playing the part of Mother Goose at a provincial theatre. The process server found the Demon King standing on a trap door ready to be projected on to the stage; he pushed him aside and took his place, and as he arrived on the stage, with a loud cry of ' A-ha ' (which was in fact in the script) he served the summons on the defendant.

The defendant put in a defence to the proceedings—a trumpery defence, your honour, to the effect that he signed the contract in a moment of exhilaration without reading it, under the belief that he was obtaining on very favourable credit terms a diamond bracelet for his girl friend. He failed, however, to attend the trial of the action and judgment was given for the plaintiff, with costs to be taxed on scale 4.

The plaintiff's bill of costs included the sum of £72 9s. 4d., the duly vouched charge of the process server. The learned registrar on taxation, on seeing this item, took a view strongly adverse to my client. My clients' very experienced costs clerk stood his ground, whereupon the registrar asked him what authority there was in the County Court Rules for any disbursements at all to be included in a party and party bill. The costs clerk immediately referred him to the County Court Rules, App. B (i.e., the scales of costs) which set out a number of disbursements which can be charged. Items 27 to 38 of the scales of costs come under the heading of ' disbursements,' your honour. Items 27 to 31 relate to counsel's fees, item 32 is for plans, photos, etc., and items 33 to 38 relate to disbursements for police reports, oaths,

postages, locomotion, etc., but nowhere could they find any item for disbursements to process servers or even (worse still!) for court fees. The plaint fee here was £4.

The learned registrar then, your honour, entered upon a mood which my professional clients describe as difficult. 'The rules go out of their way,' he said 'to enumerate those disbursements which it is proper to charge on party and party costs. Had the intention been that plaint fees should be allowable as party and party costs, it is reasonable to assume that plaint fees would have been mentioned.'

My clients' costs clerk argued that there was a general power in the court to allow reasonable costs, including all reasonable disbursements. The learned registrar then said something in Latin which started '*Exceptio probat regulam . . .*' and translated 'The exception proves (i.e., strengthens) the rule in the cases not enumerated, just as enumeration weakens it in the cases not enumerated.' In other words, the general rule (if there be such a rule) is weakened by the fact that the disbursements allowable are enumerated, and that plaint fees are not mentioned.

My clients' costs clerk then said that, if the learned registrar's contention was correct, nothing could be allowed even for witnesses' expenses, which would be ridiculous. The learned registrar toyed with the intriguing proposition that witnesses' expenses were covered by item 34 'For oaths, sum paid, unless included in another item,' but my clients' clerk hotly denied that his firm followed the Eastern practice of going out into the market-place and buying oaths (or any other kind of evidence) in order to support their case.

Order 47, rr. 29 and 30, do, however, specifically provide that witnesses' expenses *may* be allowed. 'If,' said the registrar 'even witnesses' expenses are specifically provided for in the rules as allowable on a party and party taxation, why is there no mention of plaint fees or court fees? The implication is that the intention was that court fees could not be allowable.'

The learned registrar, your honour, then became somewhat excited. Rapidly thumbing the County Court Practice, he came upon Ord. 47, r. 24, which runs: 'Subject to r. 23 of this order, no item shall be allowed on taxation between party and party, which is not contained in the scales.' Rule 23 can have no possible relevance here.

The registrar then said that r. 24 seemed here to contradict r. 29, under which witnesses' expenses *may* be allowed, and sent for Dicey's Conflict of Laws.

My clients' costs clerk then became unwell and said he wished to appeal. 'Certainly,' said the registrar 'under Ord. 47, r. 42 (1), you can apply for reconsideration of the taxation. This will be done by me.'

Your honour, I draw a veil over the proceedings on reconsideration. Several learned Queen's Counsel were unable to prevail upon the learned registrar to change his views.

The present proceedings come before your honour under Ord. 47, r. 42 (4). My clients are 'a party dissatisfied with the reconsideration' who have applied to your honour for a review of taxation. 'Dissatisfied' your honour, is a considerable understatement."

His Honour: "This case is adjourned generally; liberty to restore refused."

ARBO.

HERE AND THERE

MYTHOLOGIES

THE precise quality of the ramifying mythology of Mount Olympus in the ancient world is almost impossible for us now to gauge. It was certainly not a theology and one cannot conceive a Greek laying down his life for Jove or Hera or Aphrodite as the Jews were ready to die for Jehovah or the early Christians for Christ. No sacrificial story of pre-Christian Greece or Rome comes anywhere near to being in the same category as the story of the Catacombs and the Colosseum. The old mythology was in the nature of a cosmic poetic fiction expressing the underlying psychological unity of a people as clearly as the monstrous gods of Carthage expressed another and totally different view of life and death. Once that unity is withdrawn the mythology becomes curiously inapprehensible. Our own commercial, industrial, managerial society has not yet thrown up a formal mythology, though it has not been altogether able to dispense with figures which might stand for tutelary deities. The Victorians were fond of decorating their more pretentious civic or commercial buildings with massive female figures heavily crowned and lightly draped and denominating them Commerce, Invention, Colonial Enterprise or Industry. If you go into that domed ornate building in Holborn which was originally Birkbeck's Bank, all covered with symbolical decorations, you get the impression of keeping your money in an incredibly vulgar Pantheon. In our own time sugar, whisky, gas and boot and shoe enterprises have presented to the purchasing public symbolic figures which another civilisation, digging us up some thousands of years hence, might well interpret as a crude mythology.

COMPANY METAPHYSICS

VERY near akin to a current mythology one must also rank the Companies Act, conjuring up bodiless entities of fantastic power like genii out of bottles, and creating for them a world of metaphysical concepts previously undreamt of by the human mind. The French call them "anonymous societies" which gives a hint of their elaborately conspiratorial possibilities, the facelessness of the actual personalities behind the official façade. We call them "limited liability" companies which is likewise a flight from the common burden of humanity—full responsibility for one's own actions. No doubt their original idea was to encourage practical commercial enterprise by cushioning those who embarked on bold ventures against utter personal ruin in the event of failure. It also enabled the many to participate in undertakings which they could never have imagined or initiated, putting their resources at the disposal of bolder and more capable spirits. The prospect was enticing, but it has obviously led to a large-scale depersonalisation of the business world in which a drifting veil of nominees and debentures and voting powers and subsidiaries and holding companies and liquidations and reconstructions masks the real control of the thing done, so that Multiple Butchers, Ltd., may in fact be subject to the group behind Hydrogen Loaves, Ltd., who are secretly stalking the Amalgamated Candlestick Company. And at the heart of it all is the vacuum of a fictitious personality around

which the actual human persons ceaselessly shift and drift. The dual personalities created by company promotion produce a commercial schizophrenia. The stock market has carried gambling clear beyond the ambit of the betting legislation. Thanks to the company, tax evasion is a fine art as complex as a fugue.

"ONE IS ONE"

A RECENT case in the Court of Appeal so carried the Companies Acts just that little bit further into the realm of fantasy as to broaden into farce the well established device of the "one man company." Here the ritual co-operative dummies were dispensed with. The same man under three different names played secretary and two directors. Under two separate names he held all the shares. Under his inspired guidance, River Clubs and Houses, Ltd., which had been registered in 1923 renewed its youth (or attained its second childhood) by selling conjuring tricks by post. Lord Justice Harman expressed the greatest interest in the versatility involved. Did the man behind the company sometimes wear a false nose? When he signed in different capacities did he hold the pen sometimes in one hand, sometimes in the other, sometimes in his teeth? Though the register was missing, could it not in the circumstances be conjured out of a hat? That company's central principle was clearly the concept of "one is one and all alone and ever more shall be so." It holds the mirror of parody up to the Companies Acts as Andrew Lang held it up to Emerson's "Brahma":

> "I am the batsman and the bat:
> I am the bowler and the ball;
> The umpire, the pavilion cat,
> The roller, pitch and stumps and all."

RICHARD ROE.

POINTS IN PRACTICE

Questions, which can only be accepted from practising solicitors who are subscribers either directly or through a newsagent, should be addressed to the "Points in Practice" Department, The Solicitors' Journal, Oyez House, Breams Buildings, Fetter Lane, London, E.C.4.

They should be brief, typewritten in duplicate, and accompanied by the name and address of the sender on a separate sheet, together with a stamped addressed envelope. Responsibility cannot be accepted for the return of documents submitted, and no undertaking can be given to reply by any particular date or at all.

Solicitor's Obligation to Fulfil Undertaking to Enter an Appearance

Q. A solicitor is authorised by his client to accept service of a writ and he does this and endorses the usual undertaking to enter an appearance. Before appearance was entered a receiving order in bankruptcy was made against the client. Must the solicitor fulfil his undertaking to enter an appearance or does the discharge of his retainer by the bankruptcy also discharge him from his undertaking?

A. It seems that the solicitor must fulfil his undertaking to enter an appearance although the court has power to relieve him from his undertaking upon good cause being shown (R.S.C., Ord. 9, r. 1, note "Effect of Undertaking"). We have been unable to find any authority which suggests that the solicitor is discharged from his undertaking by reason of the making of a receiving order in bankruptcy against his client. See also Chitty's Queen's Bench Forms, 18th ed., p. 107, note (*k*).

Husband and Wife—SUMMONS AGAINST HUSBAND FOR DESERTION—CROSS-CHARGE OF ADULTERY—DISMISSAL OF SUMMONS—FURTHER SUMMONS ON EVIDENCE OF HUSBAND'S ADULTERY—PLEA OF *Res Judicata*

Q. We act for a wife who recently issued a summons against her husband before the magistrates for a separation order under the Summary Jurisdiction (Married Women) Acts on the ground of constructive desertion. The husband in his defence raised a cross-charge of adultery by the wife. The magistrates dismissed the summons without giving their reasons. It is understood that they informed their clerk that the summons was dismissed on the issue of the wife's allegation of desertion and that they did not come to the decision on the issue of the wife's alleged adultery. Since the hearing the wife has obtained evidence of adultery by the husband and wishes to issue another summons under the same Acts before the same court for a separation order on the ground of her husband's adultery. In the circumstances, could the husband defend the wife's claim by pleading that the dismissal of her previous summons amounted to *res judicata* on the issue of her adultery?

A. In our opinion, the husband cannot plead with success that dismissal of the wife's summons for constructive desertion shows that there is a finding of adultery against her. In Halsbury, 3rd ed., vol. 15, p. 202, it is said:—

> "... a judgment in favour of a defendant is not always as decisive in his favour on the points in issue as a judgment for a plaintiff would be ... a judgment may have been passed in favour of the defendant on dilatory grounds, or on one only of many alternative defences ... The burden is on the defendant to show that the judgment relied on was obtained upon grounds, or in circumstances, which afford him a defence to the subsequent action."

At pp. 207-8 (*op. cit.*) it is said:—

> "In order to ascertain what was in issue between the parties in the earlier proceedings, the judgment itself must of course be looked at ... and where there have been pleadings, these should also be examined ... Where, after trial in a court where there are no pleadings, the record of that court is relied upon, oral evidence is admissible to show what facts were in issue and determined as the basis of the judgment, and such a determination is conclusive between the same parties."

In the present case it seems that it will be necessary to ask the magistrates' clerk to call for a copy of the justices' reasons to ascertain what their decision was on the desertion case. Apparently this evidence will show that the issue of the wife's adultery was never determined then and the husband will therefore fail to show that that issue has been decided in his favour.

Licensing Act, 1953—SALE OF INTOXICATING LIQUOR OUTSIDE PERMITTED HOURS TO MEMBER OF REGISTERED CLUB AT PRIVATE HOTEL

Q. The proprietor of a private hotel has commenced thereat a proprietary club which has been registered in accordance with the Licensing Act, 1953. Can he lawfully serve, with intoxicating liquor outside the permitted hours, a person who is resident for the time being in the private hotel, and who is also a member of the club?

A. The Licensing Act, 1953, s. 100 (1), prohibits the sale or supply, outside permitted hours, of liquor for consumption on or off the premises in any registered club and the consumption in, or taking from, the club of liquor outside those hours. Section 100 (2) (*a*), however, allows the sale or supply to, or consumption by, any person of liquor in any premises where he is residing. This permits the serving of residents only, being members of the hotel-club, outside permitted hours and the consumption of drink by those residents and by anyone treated to a drink by those residents, provided such person is himself resident in the hotel. No person, whether a resident or not, may take liquor from the club outside permitted hours, as s. 100 (2) (*a*) gives no exemption for this. Nor may any member of the club who is not resident in the hotel be served with, or consume, drink outside those hours.

NOTES OF CASES

The Notes of Cases in this issue are published by arrangement with the Council of Law Reporting, and full reports will be found in the Weekly Law Reports. Where possible the appropriate page reference is given at the end of the note.

Judicial Committee of the Privy Council

LIMITATION OF ACTIONS: LAND: CERTIFICATE OF TITLE LOST: NEW ONE ISSUED: NO ALTERATION OF RIGHTS

Chisholm *v.* Hall

Lord Radcliffe, Lord Jenkins, the Rt. Hon. L. M. D. de Silva
8th July, 1959

Appeal from the Court of Appeal of Jamaica.

The appellant, J. C. Chisholm, and the respondent, J. Hall, were the registered proprietors of contiguous plots of land in King Street, Kingston, Jamaica. The appellant, who had bought his plot on 12th April, 1928, from his immediate predecessor in title who was registered as proprietor on 12th March, 1928, was himself registered on 16th April, 1928. The respondent was registered as proprietor of his plot on 30th October, 1941, having bought it on 24th October, 1941, from the Administrator-General for Jamaica as legal personal representative of the former owner who had died in 1918. The Administrator-General had obtained the registration of himself as proprietor and had had issued to him a new certificate of title on 7th May, 1919, the certificate issued to the original owner on 21st January, 1901, being cancelled. The Administrator-General subsequently lost the certificate issued to him, and on 16th October, 1941, obtained the issue to himself of a new certificate. On 31st January, 1951, the respondent brought an action against the appellant claiming, *inter alia*, a declaration that a strip of land 7 feet wide on the appellant's side of the existing boundary fence between the two plots and co-extensive with their length was comprised in his (the respondent's) certificate of title. The Court of Appeal of Jamaica, reversing the trial judge, held on 30th July, 1954, that the disputed strip formed part of the land comprised in the respondent's predecessor's registered title, and that the respondent's action was not time barred under the Jamaica Limitation of Actions Law (c. 395 of R.S., Jamaica, 1938), which by s. 3 provides that an action to recover land must be brought within twelve years from the time when the right to bring the action first accrued; and by s. 46 that where a reputed boundary has been acquiesced in for seven years it "shall for ever be deemed and adjudged to be the true boundary."

LORD JENKINS, giving the judgment, said that their lordships agreed with the Court of Appeal that the disputed strip formed part of the land comprised in the respondent's predecessor's certificate of title. They were of opinion, however, that the respondent's registered title had, by the time the action was brought, been ousted in favour of the appellant *quoad* the disputed strip by the operation of the Limitation of Actions Law. The appellant had been for over twelve years in continuous possession of the strip and could show more than seven years' acquiescence in the position of the existing boundary fence. Moreover, the appellant had completed more than twelve years' possession from 12th April, 1928 (the date of his purchase), before the Administrator-General obtained the new certificate on 16th October, 1941, in place of the lost one. The issue of the new certificate on 16th October, 1941, under s. 81 of the Registration of Titles Law (c. 353 of the R.S., Jamaica, of 1938) "in place of the former certificate" did not have the effect of defeating the title by limitation to the strip which the appellant had acquired under s. 3 of the Limitation Law. The new certificate was merely a substitute for the lost one and the procedure under s. 81 did not bring about any alteration of rights—the appellant had not to show twelve years' possession under s. 3 or seven years' acquiescence under s. 46 from 16th October, 1941, the date of issue of the new certificate. The provisions as to limitation in ss. 67 and 69 of the Registration of Titles Law contradicted each other; the two sections must be read together, and the provision in s. 67 should not by implication abrogate the express saving accorded by s. 69 to all rights acquired over the land in question since first registration under any statute of limitations whether before or after the date of the certificate of title for the time being in force. *Goodison* v. *Williams* (1931), Clark's Rep. (Jamaica) 349, which the Court of Appeal followed, was wrong and must be overruled. Appeal allowed. The respondent must pay the costs of the present appeal.

APPEARANCES: *John L. Arnold*, Q.C., and *John Monckton* (*G. F. Hudson, Matthews & Co.*); *D. N. Pritt*, Q.C., and *David S. Hunter* (*A. L. Bryden & Williams*).

[Reported by CHARLES CLAYTON, Esq., Barrister-at-Law]

Court of Appeal

DIVORCE: SODOMY: WHETHER CONSENT BAR TO DECREE

Bampton *v.* Bampton

Hodson, Sellers and Harman, L.JJ.
24th June, 1959

Appeal from Barnard, J., sitting at Winchester.

A wife petitioned for divorce on the ground, *inter alia*, of sodomy committed on her by her husband. Although she at first successfully resisted any attempt by the husband to perform these acts, she later consented for fear that her refusal would bring the marriage to an end, which she was anxious to avoid both for her own sake and that of the two children of the marriage. The wife finally left her husband because of his associations with other women. Barnard, J., dismissed the petition on the ground that the wife had consented to the acts of sodomy. The wife appealed.

HODSON, L.J., said that it was submitted on behalf of the wife that consent to the act of sodomy was no bar to relief, but even if it was there was here no real consent. Part of the *ratio* of *Statham* v. *Statham* [1929] P. 131, in so far as the question to be determined was whether the petition should be dismissed or whether there should be a new trial, was that the presence of consent was a bar to the wife claiming relief notwithstanding the fact that no words which carried the necessity of showing absence of consent appeared in the statute. Unless the court could come to a different conclusion on the facts—which it could not—it was bound by the decision in *Statham's* case to support the judge's decision and to uphold his dismissal of the petition. There was no question of consent being compelled by fraud or duress; there was nothing in the case, having regard particularly to the number of occasions when the act was successfully achieved, which suggested that there was not the element of consent which would bar the wife's claim to relief.

SELLERS, L.J., agreeing, said that the finding in *Statham's* case that consent to an act of sodomy prevented a wife relying on it as a matrimonial offence was not *obiter* but was the heart of the decision.

HARMAN, L.J., gave a concurring judgment. Appeal dismissed.

APPEARANCES: *John Thompson*, Q.C., *E. T. Read* and *Miss D. M. Rowland* (*Booth & Blackwell*, for *Brutton, Birkett & Walsh*, Portsmouth); *T. G. Field-Fisher* (*Amphlett & Co.*, for *Donelly and Elliott*, Gosport).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law]

LANDLORD AND TENANT: BOROUGH COUNCIL FLAT: WHETHER TERM TO BE IMPLIED THAT LANDLORDS SHOULD MAKE PREMISES REASONABLY FIT FOR HABITATION

Sleafer *v.* Lambeth Metropolitan Borough Council

Morris, Ormerod and Willmer, L.JJ. 2nd July, 1959

Appeal and cross-appeal from Glyn-Jones, J.

The printed conditions of a weekly tenancy agreement for a borough council flat required, *inter alia*, that the tenant should "reside in the dwelling," and (by cl. 15) should at the end of the tenancy deliver up the dwelling "in good and tenantable

repair and condition." By cl. 9: "The tenant shall not do nor allow to be done any decorative or other work to any part of the dwelling without consent in writing . . ." By cl. 11 the council was at liberty to enter to inspect the state of repair and execute repairs therein. No express term placed on either party liability to repair, but it was the practice of the council to do all the repairs, within certain limits. On 30th November, 1955, the tenant was leaving his flat by the front door when, owing to a long-standing defect in the door which caused it to jam, he had to use force to close it by pulling on the only external handle, the letter-box knocker. The knocker came off and he fell backwards against an iron balustrade and suffered injury to his back. He brought an action against the council claiming damages, firstly, for breach of contract, contending that having regard to the express terms of the agreement, there was necessarily implied a term that the landlords would make the demised premises in all respects reasonably fit for habitation; and, secondly, for breach of duty in that, having had notice of the defect in the demised premises, they had allowed it to continue in that condition to the possible danger to the user. The council denied liability. The trial judge found that the door was defective; that the council had had notice of the defect before the date of the accident but had failed to remedy it; and that it was the cause of the tenant's injuries. But he held that there could not be implied in this contract a duty on the landlords as alleged, and he dismissed the tenant's claim. The tenant appealed; and the council cross-appealed, *inter alia*, against the judge's finding that the council had had notice of the defect; but the cross-appeal was not pursued.

MORRIS, L.J., said that if there was to be implied in this contract a term that the landlords should make the premises in all respects reasonably fit for human habitation, it would be necessary to assert that if a door jammed and could only be closed with difficulty a house was not reasonably fit for human habitation. In regard to the general law concerning premises let on lease, authorities had been cited to show that "there is no implied warranty on a lease of a house . . . that it shall be reasonably fit for habitation." On the actual conditions in this contract it had been submitted that cl. 9 contained a prohibition against a tenant of the flat doing any decorative or other work in the flat, and that that, read in conjunction with cl. 15 [as to delivering up the premises in good and tenantable repair] gave rise to the implied term contended for. In his lordship's view, cl. 9 was designed to keep control over the work done by a tenant and was not a prohibition. Though in fact and in practice the council intended to do the necessary repairs, nothing in the conditions showed that they had obligated themselves to do repairs. It was not necessary, in order to give this contract business efficacy, to imply the term contended for. If it had been desired to have any such term it could have been made the subject of an express term. In fact the council were rather careful in this weekly contract to avoid making themselves bound to do the repairs. On the submission that, independently of contract, there was a duty which arose in all the circumstances, one of which was that the landlords were given notice of certain defects, his lordship found it impossible to say that any duty could be formulated other than such as was to be found in the contractual position. The appeal should be dismissed.

ORMEROD, L.J., concurring, said that there might be tenancy agreements in which it was possible to imply an obligation on the landlords to do repairs, but such an obligation could not be implied in this particular agreement.

WILLMER, L.J., also concurring, said that it was impossible to say that the landlords were under any liability in tort. There could be no duty owed to all the world to keep anybody's front door in repair. The duty, if there was one, must arise as a matter of contract. On the contractual position, though there was much to be said for the view that the clause which required the tenant to reside in the dwelling-house did by implication require the landlords to do such repairs as made it possible for the tenant to carry out that obligation, the obligation would not, in his lordship's view, extend to cover the trivial repair here under consideration. Appeal dismissed.

APPEARANCES: *F. W. Beney*, Q.C., and *Douglas Lowe* (*Marcan & Dean*); *Stephen Chapman*, Q.C., *Peter Rawlinson*, Q.C., and *G. Williams* (*Pennington & Son*).

[Reported by Miss M. M. HILL, Barrister-at-Law]

COSTS: PAYMENT INTO COURT OF EXACT AMOUNT AWARDED BY JUDGE: PROPER EXERCISE OF DISCRETION AS TO COSTS

Wagman *v.* Vare Motors, Ltd.

Morris, Ormerod and Willmer, L.JJ.
10th July, 1959

Appeal and cross-appeal from Thesiger, J.

The plaintiff brought an action to recover damages for personal injuries sustained in a motor accident in June, 1956. In January, 1958, the defence delivered denied negligence, but an accompanying letter stated that the only issue at the trial would be that of damages. On 18th August, 1958, the defendants paid into court the sum of £575; and medical reports were agreed in September. On 16th October, 1958, after a two-hour trial, the judge awarded a total of £575 in special and general damages. Counsel for the plaintiff then told the judge that the amount was to a penny the amount paid into court but that the judge had a discretion as to costs. The defendants asked that they should have their costs as from the date of the payment into court; but after some discussion, the judge, applying the provisions of R.S.C., Ord. 22, r. 6 [which provides that "the judge shall, in exercising his discretion as to costs, take into account both the fact that money has been paid into court and the amount of such payment"], said that he took into account those two matters and also, in the exercise of his discretion, the fact that he was not at any time thinking of giving less than £575 and was wondering about another £25, and in all the circumstances the proper order was to make no order as to costs as from the date of payment into court. The defendants appealed against that order and the plaintiff cross-appealed against the amount of damages awarded. The Court of Appeal, having heard the plaintiff's appeal first, dismissed it.

MORRIS, L.J., on the defendants' appeal, said that although the judge did not know of the payment into court, it was plain that the real issue between the parties after 18th August, 1958, was whether or not £575 was a fit sum for the plaintiff to receive. After that date he could have had £575. He decided to go on with the litigation in the hope of getting more. He was unsuccessful and the defendants were therefore the successful parties in the issue contested before the judge. What the judge said was that he took into account in his discretion the fact that he never thought of giving less than £575 but that in his mind there had been times when he thought of giving more. That was not a valid reason for the exercise of a discretion. The judge had thought the matter over carefully and had concluded that £575 was the right amount. It could not be a good basis for any discretion to say that possibly a larger amount might have been awarded. The case fell within the words of Lord Greene, M.R., in *Hong* v. *A. & R. Brown, Ltd.* [1948] 1 K.B. 515, 518, as a "purported exercise of the discretion without any materials on which a judge could exercise it." The order as to costs should be varied and the costs after the date of payment in should be those of the successful party, namely, the defendants.

ORMEROD and WILLMER, L.JJ., agreed. Appeal allowed. Order of judge varied accordingly.

APPEARANCES: *Martin Jukes*, Q.C., and *Bernard Caulfield* (*Ponsfold & Devenish, Tivendale and Munday*); *Stephen Chapman*, Q.C., and *Alan de Piro* (*R. I. Lewis & Co.*).

[Reported by Miss M. M. HILL, Barrister-at-Law]

Chancery Division

VARIATION OF TRUSTS: INFANTS: NOT ADVANTAGEOUS IN CERTAIN UNLIKELY CONTINGENCY: WHETHER PROVISION AGAINST RISK NECESSARY

***In re* Cohen's Will Trusts**

***In re* Cohen's Settlement Trusts**

Danckwerts, J. 16th April, 1959

Adjourned summons.

Application was made to the court under s. 1 of the Variation of Trusts Act, 1958, to approve on behalf of infants and all persons unborn or unascertained who were or might be interested therein a scheme for the re-arrangement of the beneficial interests arising under a will and settlement of even date. It was not in

dispute that the arrangement was, as a whole, for the benefit of all persons interested, but it was submitted that in the unlikely event of one of the testator's children predeceasing his widow, now aged nearly eighty, the arrangement would not be advantageous to the next generation, and that some provision might therefore be made to guard against the contingency.

DANCKWERTS, J., said that he did not see why any provision should be made for such a contingency; if people came to the court for approval of a scheme of this sort, they must be prepared to take some sort of risk, and if the risk was one that an adult would be prepared to take, the court was prepared to take it on behalf of an infant. His lordship accordingly approved the scheme without ordering provision to guard against this contingency.

APPEARANCES: *John Pennycuick*, Q.C., and *J. P. Warner*; *James Cunliffe*; *Geoffrey Dearbergh*; *R. Cozens-Hardy-Horne*; *J. A. Wolfe*; *B. L. Bathurst*, Q.C., and *Eric Griffith*; *Geoffrey Cross*, Q.C., and *D. H. McMullen*; *Ralph Instone* (*Alsop, Stevens & Co.*, for all parties).

[Reported by Mrs. IRENE G. R. MOSES, Barrister-at-Law]

LANDLORD AND TENANT: NEW LEASE OF BUSINESS PREMISES: PROPERTY CONSTITUTING THE HOLDING WITHIN S. 32 (1) OF THE 1954 ACT

Narcissi *v.* Wolfe

Roxburgh, J. 16th June, 1959

Originating summons.

Premises consisting of a ground floor, basement and three upper floors were held by a *restaurateur* on a lease expiring on 25th December, 1958. On 27th February, 1958, the tenant applied to the landlord for a new lease of the whole of the premises, and the landlord gave notice that he intended to oppose the application on the ground that the holding consisted of the ground floor and basement only. At the date of the commencement of proceedings the tenant was using the ground floor and basement in connection with his restaurant business and the three upper floors were let on furnished tenancies. Before the hearing the sub-tenant of the first floor gave up his tenancy and the tenant, who had been warned by the medical officer of health not to use the basement for the storage of food not in sealed containers, used the first floor for storing a certain amount of food. He left some furniture in the first floor and occasionally used a table there for office work in connection with his business; on one occasion he spent the night there. The tenant admitted that his use of the first floor for storage of food was a temporary measure which would cease when the basement was repaired and that, by using it, he hoped to obtain a new lease which included the first floor. [Section 32 (1) of the Landlord and Tenant Act, 1954, provides that "in the absence of agreement between the landlord and tenant as to the property which constitutes the holding, the court shall in the order designate that property by reference to the circumstances existing at the date of the order." By s. 23 (3), "'the holding' means the property comprised in the tenancy, there being excluded any part thereof which is occupied neither by the tenant nor by any person employed by the tenant . . ."]

ROXBURGH, J., said that there was no authority throwing any light on the meaning of the word "occupied" in s. 23 (3) of the 1954 Act, but, applying common sense, it seemed to him that the second and third floors were occupied by the sub-tenants and not by the tenant. Under s. 32 (1) the date at which the property which constituted the holding was to be designated was the date of the order of the court and not the date of the issue of the application. The tenant was using the first floor in part to try and take advantage of the opening which Parliament had accorded to him by s. 32, and there was nothing against his so doing. It was not his lordship's business to investigate the tenant's purpose, but the question was whether the occupation was real, however conditional, or merely colourable. His lordship accepted the evidence that the tenant was in real need of storage accommodation and would continue to be in such need until the basement was put into a condition in which it might be used for storing food, and that aspect of the case made it impossible to say that the occupation was merely colourable. His lordship therefore held that to-day, the date of his order, the tenant was in occupation of the first floor, and accordingly he designated the holding as being the basement, ground floor and first floors, but not the second and third floors. Order for a new lease accordingly.

APPEARANCES: *Lionel Blundell*, Q.C., and *H. Lester* (*Lesser, Fairbank & Co.*); *Roger Ormrod*, Q.C., and *J. D. Moylan* (*Arthur Hunt & Hunt*).

Reported by Miss J. F. LAMB, Barrister-at-Law]

Queen's Bench Division

SALE OF GOODS: C.I.F.: CLOSURE OF SUEZ CANAL: FRUSTRATION

Albert D. Gaon & Co. *v.* Société Interprofessionelle Des Oleagineux Fluides Alimentaires

Ashworth, J. 5th June, 1959

Special case stated by the Committee of Appeal of the Incorporated Oil Seed Association.

By a contract dated 12th October, 1956, sellers agreed to sell to buyers Sudanese ground-nuts for shipment c.i.f. Nice during October/November, 1956. By a second contract dated 31st October, 1956, the sellers agreed to sell a further quantity of ground-nuts for shipment c.i.f. Marseilles during November, 1956. Shipment in both cases was to be from Port Sudan. On 2nd November, 1956, the Suez Canal was closed to navigation and remained closed till 9th April, 1957. The alternative route round the Cape of Good Hope was more than four times as long and freightage nearly five times as costly. No goods were shipped under either contract by the sellers who claimed that they were prevented from doing so by the events in the Middle East. It was found that at the date of the first contract both parties, if they had given their minds to the question, would have contemplated that shipment would be made via the Suez Canal and that this route was the usual and normal one; there was no finding as to the parties' state of mind at the date of the second contract. There was also a further finding (*a*) that if after the closing of the canal the sellers had shipped the goods via the Cape the buyers could not have rejected them, and (*b*) that while shipment via the Cape would have been more expensive than via the Canal this did not make performance of the contracts commercially impossible.

ASHWORTH, J., said that in considering whether a contract of this type had been frustrated by the disappearance of the usual or customary route, one had to decide, *inter alia*, whether an alternative route existed, and, if so, whether performance by that route would "render it a thing radically different from that which was undertaken by the contract": *per* Lord Radcliffe in *Davis Contractors, Ltd.* v. *Fareham Urban District Council* [1956] A.C., at p. 729. The sellers contended that shipment via the Cape, which was an alternative mode of performing the contracts, would fall within the scope of the words quoted, the points of difference being said to be (i) expense, (ii) distance, (iii) character of voyage, and (iv) a totally different contract of affreightment. So far as (i) was concerned finding (*b*) precluded the court from holding that the increase in expense was sufficient to frustrate the contract. In regard to (ii) and (iii), there might be cases in which buyers could reject documents on the ground, e.g., that the goods had been shipped by a route which would render them liable to damage or deterioration or unreasonable delay, but in the present case his lordship drew the inference from finding (*a*) that neither distance nor the character of the voyage would have been such as to entitle the buyers to reject the documents. In regard to (iv), it did no more than summarise the other suggested differences. Accordingly, although the performance of the sellers' obligations after the closure of the Canal would have involved them in greater expense, they would not have been performing something radically different from that which they had undertaken to do; the contract was not frustrated and therefore the sellers were liable to the buyers. Award upheld.

APPEARANCES: *Eustace Roskill*, Q.C., and *R. A. MacCrindle* (*Richards, Butler & Co.*); *Sir David Cairns*, Q.C., and *F. E. J. Allemès* (*Rowe & Maw*).

[Reported by J. D. PENNINGTON, Esq., Barrister-at-Law]

CORRESPONDENCE

[The views expressed by our correspondents are not necessarily those of "The Solicitors' Journal"]

Specimen Epitome

Sir,—Let me say at once, that I dislike the idea of an abstract consisting (in your example) of six disconnected documents. These documents will have to travel between the vendor's, purchaser's and mortgagees' solicitors and one or more of them will get mislaid. Any litigation man will tell you how counsel's documents melt away and these will pass through more hands. Moreover, you have not abstracted your searches. This will add at least seven more copies to the bundle.

Also I do not think that you have appreciated the scope of present-day photographic copying (I use this word generally—personally I prefer dyeline copies, where possible). If you adopt the standard brief sheet for your abstract you can copy any smaller size document on to it (in some cases two pages at once) and can add notes either photographically (as the Land Registry does) or by typing. Moreover, you can "mask out" irrelevant passages. In practice, very few documents cannot be copied on a brief sheet and those are usually unsuitable for photographic reproduction.

In my view it would be best to preserve the existing make up of the abstract as a bundle of brief sheets sewn together, adding any notes or comments necessary to clarify the position on the copies themselves. To explain this I will go through your example.

For the first eight events therein you have an abstract. It is not clear from your notes (col. 5) whether what you have is an examined abstract or a copy of an examined abstract. Column 6 leaves it doubtful whether the "original" referred to is the examined abstract or the deed abstracted (though surely Messrs. Charon & Styx have not custody of the death of Edward Haddock). Column 7 suggests that the examined abstract will not be handed over on completion (wrongly, I submit!).

However, taking this abstract I would prepare a photographic copy masking out the heading (which I presume reads "Abstract of Title of Robert Place, etc."). On the copy I would type the appropriate heading "Abstract of Title of John and Mary Codd, etc.", and in the margin I would type "Examined Abstract in our possession"—or as the case may be. I should not say the original deeds were in the custody of Charon & Styx. They last dealt with the property in 1931 and may well have parted with the deeds.

This produces an abstract down to the conveyance of 10th October, 1946. I would copy this document again on brief paper. As an introduction I would type across the top of the copy "1946 11th November By Conveyance of this date between (1) R. Place (2) E. Soul and C. Pike (copy as follows). It would be an unusual conveyance if the first sheet, when copied onto a brief sheet, left no space for this heading but in that event the end of the previous page could be used or a separate page inserted. Similar methods could be used to introduce, in their proper places, deaths, the results of searches and other events requiring reciting rather than abstracting in detail.

By this method I have, I suggest, produced one document, giving a proper abstract rather than six documents (all requiring to be stitched up separately). I have not, I agree, given the information suggested in cols. 6 and 7. Column 6 may well, in older documents be misleading, and as the answers to col. 7 may (as suggested above) be matters of opinion, they should not I feel go in an abstract.

On copying generally, there are two points I would make. Many documents do not photograph well, because of deep creases, stains and faded ink. If in any case the photographic copy is not clearly and easily legible, the document should be abstracted. Finally, the practice of unstitching documents for ease of photography should be condemned. It at once arouses doubts as to authenticity.

T. W. PINNOCK.

London, W.1.

Sir,—I have read with interest the specimen epitome and the comments thereon appearing on pp. 551 and 552 of your issue dated 17th July.

You will, no doubt, be fully aware of the controversy which has arisen in connection with s. 44 and s. 198 of the Law of Property Act, 1925, under the joint operation of which we have reached the stage where, under s. 44 the statutory root of title can commence thirty years ago, namely, well after 1st January, 1926, while under s. 198 the registration under the Land Charges Act, 1925 (which could have been made before the root of title), "shall be deemed to constitute actual notice" of the instrument or matter registered. If it is likely that an epitome such as you are now suggesting is to be recognised as a common form, then I would urgently suggest that in every case the epitome should include the information given in cols. 1, 3, 4, 6, 7 of other documents affecting the title from the date of the last conveyance before 1st January, 1926. Where such a document occurs before the normal root of title, col. 5 would contain the note "prior to root of title."

I would also suggest that the epitome contains details of searches in the land charges register made on the occasion of every conveyance or purchase on or after 1st January, 1926.

It is now accepted, as normal good conveyancing practice, that searches should be abstracted and the use of an epitome such as I have suggested dealing with the dealings prior to the root of title would be one method of overcoming the difficulties caused by the conflict between ss. 44 and 198. The epitome, or a marked copy, would, of course, be held by the purchaser and handed over with the deeds on any subsequent transaction.

R. L. CROWTHER.

Brighton, Sussex.

Sir,—I have read with interest your article on suggested forms of epitomes of title. I think that the following improvements could be made: (1) There should be a separate schedule, annexed to the epitome, showing the names, addresses and dates, etc., of searches made in H.M. Land Registry. (2) It seems unnecessary for every conveyance to be copied; the first conveyance dealing with the property as a single entity should be copied, but subsequent ones dealing with the same property could be merely included in the epitome—the same considerations apply to building society mortgages which have been vacated.

R. F. RIGBY.

Newcastle,
Staffordshire.

Solicitors and Estate Agents: An Objectionable Practice

Sir,—Congratulations to the Council of The Law Society on their recent pronouncement condemning the practice of solicitors sharing accommodation, staff and telephone arrangements with estate agents and other persons who are not solicitors (*vide Law Society's Gazette*, July, 1959, p. 477), but why have the Council waited so long before condemning this most objectionable practice and will they follow up their words by disciplinary action in appropriate cases?

I sincerely hope they will, because the practice referred to has been spreading like wildfire in the past few years and it is now common in many districts to see the names of solicitors boldly displayed on the doors of estate agents' offices. Moreover, in many cases the agents concerned are not members of any of the recognised professional bodies. Some of them are of the worst type—they tout for their own business and indirectly they act as touts for the business of the solicitors whose names they display.

In my experience the objectionable practice to which I have referred is not confined to estate agents' offices. I know of one case where the only means of access to a solicitor's office is through a retail shop and the solicitor's firm name is displayed on the shop-front beneath the name of the shopkeeper!

The Council say they have recently considered "one or two cases." There are many more which should receive their immediate consideration—unless the offenders take note and mend their ways without delay.

"FAIR PLAY."

WEEKLY LAW REPORTS: REFERENCES

The following page number can now be given in respect of notes of cases published in these columns on the date indicated:—

3rd July, 1959:—

Watson's Settlement Trusts, *In re*; Dawson and Another *v.* Reid and Others .. .. 1 W.L.R. 732

IN WESTMINSTER AND WHITEHALL

HOUSE OF LORDS

PROGRESS OF BILLS

Read Third Time:—

British Transport Commission Bill [H.C.] [23rd July.
British Transport Commission Order Confirmation Bill [H.C.] [22nd July.
Edinburgh College of Art Order Confirmation Bill [H.C.] [22nd July.
Education Bill [H.C.] [21st July.
Export Guarantees Bill [H.C.] [23rd July.
Finance Bill [H.C.] [23rd July.
Humber Bridge Bill [H.C.] [23rd July.
Legitimacy Bill [H.C.] [22nd July.
Leith Harbour Docks Order Confirmation Bill [H.C.] [22nd July.
Mid-Wessex Water Bill [H.C.] [22nd July.
National Galleries of Scotland Bill [H.C.] [23rd July.
New Towns Bill [H.C.] [23rd July.
Pier and Harbour Provisional Order (Gloucester) Confirmation Bill [H.C.] [23rd July.
Pier and Harbour Provisional Order (Medway Lower Navigation) Confirmation Bill [H.C.] [23rd July.
Portsmouth Corporation Bill [H.C.] [23rd July.
Shell-Mex and B.P. (London Airport Pipeline) Bill [H.C.] [23rd July.
Tees Valley and Cleveland Water Bill [H.C.] [22nd July.

HOUSE OF COMMONS

A. PROGRESS OF BILLS

Read First Time:—

Gaming Bill [H.C.] [24th July.

To repeal previous gaming enactments, and to make fresh provision with regard to gaming in England and Wales.

Read Second Time:—

Colonial Development and Welfare Bill [H.L.] [24th July.
Consolidated Fund (Appropriation) Bill [H.C.] [23rd July.

To apply a sum out of the Consolidated Fund to the service of the year ending on the thirty-first day of March, one thousand nine hundred and sixty, and to appropriate the supplies granted in this Session of Parliament.

Town and Country Planning (Scotland) Bill [H.L.] [24th July.

Read Third Time:—

Bootle Corporation Bill [H.L.] [23rd July.
Falmouth Docks Bill [H.L.] [20th July.
Joseph Rowntree Memorial Trust Bill [H.L.] [20th July.
Statute Law Revision Bill [H.L.] [24th July.
Wages Councils Bill [H.L.] [24th July.

B. QUESTIONS

RATING OF CHARITIES: PRITCHARD COMMITTEE REPORT

Mr. HENRY BROOKE said that he had received the Pritchard Committee's Report, and it was being published as a Command Paper as soon as it was ready, which despite printing difficulties would he hoped be next month. [14th July.

INCOME TAX ACT, 1952, S. 468: ADVISORY PANEL

Mr. HEATHCOAT AMORY said that he had appointed Sir James Millard Tucker, Q.C. (Chairman), Mr. A. H. Carnwath and Sir William Carrington, F.C.A., as members of the Advisory Panel to advise him on the administration of s. 468 of the Income Tax Act, 1952. He expressed his sincere thanks to those members who had recently retired from the panel. [20th July.

RATING ASSESSMENTS OF COTTON MILLS: TEST CASES

Mr. JOCELYN SIMON said that five agreed test cases were submitted for arbitration by the Lands Tribunal on 1st and 3rd April. The ratepayers' statements of case were delivered, after an extension of the time-limit for delivery, on 12th June. The Inland Revenue had also sought an extension of the time-limit for delivery of its replies, but there would be no avoidable delay on its part. [21st July.

TITHE REDEMPTION COMMISSION

Mr. JOCELYN SIMON said that it was proposed to transfer the whole of the functions of the Tithe Redemption Commission to the Board of Inland Revenue with effect from 1st April, 1960. [22nd July.

STATUTORY INSTRUMENTS

Agricultural Lime Schemes (Extension of Period) Order, 1959. (S.I. 1959 No. 1232.) 5d.

Agriculture (Stationary Machinery) Regulations, 1959. (S.I. 1959 No. 1216.) 6d.

Coal Mines (Clearances in Transport Road) Regulations, 1959. (S.I. 1959 No. 1217.) 7d.

Fishing Nets (Northwest Atlantic) Order, 1959. (S.I. 1959 No. 1226.) 6d.

Import Duty Orders:—
Drawbacks (No. 7). (S.I. 1959 No. 1214.) 4d.
Drawback (No. 8). (S.I. 1959 No. 1240.) 5d.
General (No. 7). (S.I. 1959 No. 1215.) 5d.

London Traffic (Prescribed Routes) (Kingston-upon-Thames) Regulations, 1959. (S.I. 1959 No. 1225.) 5d.

National Insurance Act, 1959 (Commencement) Order, 1959. (S.I. 1959 No. 1212.) 4d.

National Insurance (Retirement Pension Increments) (Transitional) Regulations, 1959. (S.I. 1959 No. 1213.) 5d.

Parking Places (Scotland) (No. 1) Order, 1959. (S.I. 1959 No. 1205.) 4d.

Probation (Scotland) Amendment (No. 2) Rules, 1959. (S.I. 1959 No. 1206.) 6d.

Smoke Control Areas (Exempted Fireplaces) Order, 1959. (S.I. 1959 No. 1207.) 5d.

Stopping up of Highways Orders:—
Berkshire (No. 2) 1951 (Variation). (S.I. 1959 No. 1197.) 5d.
City and County Borough of Birmingham (No. 12). (S.I. 1959 No. 1203.) 5d.
City and County Borough of Bradford (No. 4). (S.I. 1959 No. 1209.) 5d.
County of Carmarthen (No. 1). (S.I. 1959 No. 1196.) 5d.
County of Derby (No. 14). (S.I. 1959 No. 1218.) 5d.
County of Essex (No. 13). (S.I. 1959 No. 1194.) 5d.
County of Essex (No. 14). (S.I. 1959 No. 1219.) 5d.
City and County Borough of Gloucester (No. 2). (S.I. 1959 No. 1181.) 5d.
County Borough of Huddersfield (No. 1). (S.I. 1959 No. 1199.) 5d.
County of Kent (No. 14). (S.I. 1959 No. 1182.) 5d.
County of Kent (No. 15). (S.I. 1959 No. 1220.) 5d.
County of Lancaster (No. 13). (S.I. 1959 No. 1180.) 5d.
City and County of Lichfield (No. 1). (S.I. 1959 No. 1195.) 5d.
County of Lincoln—Parts of Lindsey (No. 3). (S.I. 1959 No. 1221.) 5d.
City and County Borough of Liverpool (No. 5). (S.I. 1959 No. 1210.) 5d.
City and County Borough of Liverpool (No. 7). S.I. 1959 No. 1222.) 5d.
County of Northumberland (No. 3). (S.I. 1959 No. 1223.) 5d.
County of Suffolk, East (No. 6). (S.I. 1959 No. 1187.) 5d.
County of Suffolk, West (No. 4). (S.I. 1959 No. 1198.) 5d.
County of Warwick (No. 9). (S.I. 1959 No. 1188.) 5d.
County of Warwick (No. 10). (S.I. 1959 No. 1183.) 5d.
County of Warwick (No. 11). (S.I. 1959 No. 1184.) 5d.
County of York, North Riding (No. 2). (S.I. 1959 No. 1224.) 5d.

County of York, West Riding (No. 14). (S.I. 1959 No. 1185.) 5d.

County of York, West Riding (No. 15). (S.I. 1959 No. 1211.) 5d.

Superannuation (Service in Certain Places Abroad) (Amendment) (No. 2) Order, 1959. (S.I. 1959 No. 1239.) 5d.

White Fish and Herring Subsidies (Aggregate Amount of Grants) Order, 1959. (S.I. 1959 No. 1234.) 5d.

SELECTED APPOINTED DAYS

July

17th National Insurance Act, 1959 (Commencement) Order, 1959. (S.I. 1959 No. 1212.)
Smoke Control Areas (Exempted Fireplaces) Order, 1959. (S.I. 1959 No. 1207.)

August

10th Plant and Machinery (Valuation for Rating) Rules, 1959. (S.I. 1959 No. 1255.)

NOTES AND NEWS

CIVIL JUDICIAL STATISTICS

Command 802, published last week, shows that the number of appeals to the House of Lords during the year was fifty-two as compared with thirty-three in the year 1957. There were 668 appeals set down in the Court of Appeal of the Supreme Court, a decrease of seventy-seven as compared with 1957. Of this number 223 were appeals from county courts. The total of appeals and special cases entered or filed in the High Court from inferior courts was 315, a decrease of forty-four. The total proceedings in the three divisions of the High Court increased by 7 per cent. as compared with the preceding year, from 117,755 to 125,790. Proceedings in the Chancery Division increased by 996 to 9,954; in the Queen's Bench Division there was an increase of 8,647 to 88,959; and in Probate, Divorce and Admiralty, a decrease of 1,608 to 26,877.

MATRIMONIAL CAUSES

The number of matrimonial petitions filed during the year 1958 was 26,444, a decrease of 1,618 as compared with the preceding year. The number of petitions filed during the year for dissolution of marriage included 8,880 petitions for desertion, 4,869 petitions for cruelty, 188 petitions for lunacy and seventy-two petitions for presumed decease. Application for leave to present a petition for divorce within three years of the date of the marriage was made in 179 cases and in 135 cases the petition was allowed. The number of decrees *nisi* for dissolution of marriage was 23,456; 10,653 being on husband's petitions and 12,803 on wives' petitions. The number of causes heard at divorce towns during the year 1958 was 15,678, of which 14,789 were undefended. The number heard at Assizes was 590. The total number of matrimonial causes which were heard outside London during the year 1958 was, therefore, 16,268. The number heard in London was 8,169.

PROCEEDINGS IN COUNTY COURTS

The number of proceedings commenced in county courts showed an increase of 23 per cent., from 1,081,451 to 1,335,774. Of the actions disposed of, 69 per cent. (901,606) were determined by consent or on admission or in default of appearance or defence and 2 per cent. (26,965) were determined on hearing. The remaining 29 per cent. (365,217) were struck out, withdrawn, paid or otherwise disposed of before hearing. Of the 26,956 actions determined on hearing 17,110 were determined before a judge, 9,822 before a registrar, and twenty-four before an arbitrator appointed by the judge under s. 89 of the County Courts Act, 1934.

LEICESTERSHIRE DEVELOPMENT PLAN APPROVED

The Minister of Housing and Local Government has approved with modifications the development plan for the County of Leicestershire. The plan, as approved, will be deposited in the County Offices, Grey Friars, Leicester, for inspection by the public.

THE SOLICITORS' LAW STATIONERY SOCIETY, LIMITED

Mr. JOHN PHILIP LAWTON, B.A., LL.B. (Cantab.), of Messrs. Wilkinson, Howlett & Moorhouse, solicitors, 14 Bedford Street, Strand, W.C.2, and Kingston-on-Thames, was elected a Director of The Solicitors' Law Stationery Society, Limited, on 28th July, to fill the vacancy caused by the death of Sir W. Alan Gillett, T.D., D.L.

Personal Note

Mr. FRANK MARSHALL STENNING, managing clerk with Messrs. Bartlett & Gluckstein, solicitors, has been a member of their staff for sixty years. At the age of seventy-seven he is still "going strong."

Obituary

Mr. STANLEY GALBRAITH LAWRENCE, solicitor, who served on the legal staff of the National Coal Board until his retirement in 1952, died on 6th July, aged 72.

Mr. FREDERICK GEORGE GARNAC MORRIS, solicitor, died on 13th July, aged 75. He was admitted in 1907.

Mr. DAVID WILLIAMS, LL.B., solicitor, of Caernarvon, died on 4th July, aged 40. He was admitted in 1945. He was elected a member of the Caernarvon Borough Council in 1945 and became Mayor in 1957.

Wills and Bequests

Mr. F. C. CHAMPNEYS, solicitor, of Tunbridge Wells, left £80,670 net.

Mr. WILFRID DUNN, solicitor, of Bradford, left £26,104 net. He bequeathed £4 for each year of employment to each clerk in the firm of Wilfrid Dunn & Connoll, Place & Wright, at the date of his death and not under notice.

Mr. JOHN WARDLE, solicitor, of Leek, Staffordshire, left £59,109 net.

PRINCIPAL ARTICLES APPEARING IN VOL. 103

3rd to 31st July, 1959

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